

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Marilyn L. Froncek,

Plaintiff,

v.

Case No. 10-14447

Commissioner of Social Security,

Honorable Sean F. Cox

Defendant.

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**ORDER ADOPTING**  
**FEBRUARY 27, 2012 REPORT AND RECOMMENDATION**

Plaintiff Marilyn L. Froncek (“Plaintiff”) filed this action, challenging the Commissioner’s unfavorable decision disallowing benefits. Thereafter, the Commissioner filed a motion for summary judgment and Plaintiff filed a motion seeking remand. Those motions were referred to Magistrate Judge Michael Hluchaniuk, pursuant to 28 U.S.C. § 636, for issuance of a report and recommendation.

On February 27, 2012, Magistrate Judge Hluchaniuk issued his report and recommendation (“R&R”) wherein he recommends that the Court deny Plaintiff’s motion for remand, grant the Commissioner’s motion for summary judgment, and affirm the findings of the Commissioner. (Docket Entry No. 14).

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R. “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional

evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made." *Id.*

On March 2, 2012, Plaintiff filed written objections to the February 27, 2012 R&R. (Docket Entry No. 15).

First, Plaintiff objects to the Magistrate Judge's agreement with the ALJ's conclusion that Plaintiff's claimed impairments of Irritable Bowel Syndrome ("IBS") and migraine headaches were not severe. (Objs. at 1-7).

Having reviewed the ALJ's written decision, however, this Court also agrees that there is an insufficient basis to overturn the ALJ's determination that Plaintiff's impairments of IBS and migraine headaches were not severe. As to the migraine headaches, the ALJ explained that Plaintiff admitted that she has been taking medications for her migraine headaches for years and that the medication has been effective in preventing her migraines. While Plaintiff testified that her medications for migraine headaches caused dizziness and nausea, there is only one instance, in 2002, when Plaintiff reported such alleged side effects to her health care providers. This Court agrees that it was appropriate for the ALJ to conclude that Plaintiff's claim of medication side effects was not entirely credible given the lack of supporting evidence in the record. As to Plaintiff's complaints about IBS, none of Plaintiff's treating physicians imposed any limitations on her as a result of her IBS symptoms. The Court therefore finds Plaintiff's first objection to be without merit.

Next, Plaintiff objects to the Magistrate Judge's conclusion that the ALJ's hypothetical properly accounted for Plaintiff's limitations and is supported the record. This Court agrees with the Magistrate Judge that there is no basis to overturn the ALJ's decision regarding Plaintiff's

mental impairments and her functional capacity. The Court finds this objection without merit.

Finally, Plaintiff objects to the Magistrate Judge's determination that the ALJ's decision is supported by substantial evidence. This Court agrees with the Magistrate Judge that, under the applicable substantial evidence standard, set forth at pages 10 through 12 of the R&R, the ALJ's determination in this matter is well within the "zone of choice" accorded to the ALJ.

Accordingly, the Court ACCEPTS and ADOPTS the February 27, 2012 R&R.

IT IS ORDERED that Plaintiff's motion for remand is DENIED.

IT IS FURTHER ORDERED that the Commissioner's motion for summary judgment is GRANTED and this Court hereby AFFIRMS the Commissioner's decision.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: March 21, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 21, 2012, by electronic and/or ordinary mail.

S/Jennifer Hernandez

Case Manager